



THE COMMONWEALTH OF MASSACHUSETTS
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SENT ELECTRONICALLY, BY FAX AND MAIL

September 12, 2001

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: Petition of Cape Light Compact for Approval of A Municipal Aggregation Default Service Pilot Project, DTE 01-63

Dear Secretary Cottrell:

On August 15, 2001, the Cape Light Compact ("Compact") submitted a Petition to the Department of Telecommunications and Energy ("Department") seeking approval of a Plan for Default Service Pilot Project ("Pilot Project"). Pursuant to this plan, the Compact seeks to provide electric power supply to approximately 42,000 default service customers within its twenty-one member communities. In its filing the Compact states that the Pilot, developed in consultation with the Division of Energy Resources ("DOER"), is consistent with the aggregation plan approved by the Department in D.T.E. 00-47. Pursuant to the Plan, all existing and new default service customers in the twenty-one member communities will be automatically enrolled in the Pilot Project and will be given the opportunity to opt-out and remain on default service or choose another supplier. Customers would be notified of their ability to opt-out and would have approximately three weeks, during the Thanksgiving Holiday period, to make their decision not to join the Compact's Pilot. The proposed Pilot Project would be for a period of 15 months with service beginning January 1, 2002.

Pursuant to an Order of Notice dated August 24, 2001 the Department requested comments on the Cape Light Compact's proposal for a Default Service Aggregation Pilot on September 11, 2001 and Reply Comments on September 18, 2001. The Attorney General submits this letter as his Initial Comments.

The Attorney General urges the Department to schedule adjudicatory hearings in this matter to determine whether the Pilot Project, as proposed, is in the best interests of customers. The filing is lacking in detail on a number of issues and there is a need to develop a record on

these issues.¹

First, it does not appear from the filing that the Compact has a power contract in place and has not offered evidence concerning the price that customers will pay or that these prices will be lower than NSTAR's default service. The Plan also does not discuss whether the Compact will be issuing an RFP to secure its power supply at a discount from the utility's default service.² Nor does the Plan does provide for the recovery of costs associated with the administration of the Pilot Project - customer switching or costs unrecovered from customers leaving the Pilot. Furthermore, it is unclear whether there is the potential for this Pilot Project to increase costs to the remaining NSTAR default service customers. The potential for the movement of a relatively large block of customers from the utility's default service to the Compact may add to the cost of the utility's default service, and to the extent that customer's may come back to the utility any time, this may further exacerbate the risk associated with providing utility default service and therefore increase the cost.

Second, the Compact's filing does not address the default service requirements imposed by both the Act and the Department. *See* G.L. c. 164 § 1B(d). The Department, in implementing the legislation, required that default service prices be offered as both a fixed and a variable option with the fixed prices being set for 6 month periods.³ *See Pricing and Procurement of Default Service*, D.T.E. 99-60 (1999) and various subsequent orders. The Department has also required that utilities notify customers of default service prices through notices contained in bills, toll-free telephone numbers and on websites with specific protocols delineated regarding the provision of default service. *Id.* The Compact has not addressed the notice requirements and has not indicated what rate options, if any, it will provide customers and under what conditions these options will be available.

Third, although the Compact maintains that it is proposing a Default Service Pilot program, its filing does not comport with the requirements for the provision of that service. The Compact is actually proposing a competitive supply option that seeks to capitalize on the ability of a municipal aggregation to enroll customers automatically without their explicit consent.⁴

¹ The Compact has filed for approval of this Pilot Project under Section 339 of the Electric Utility Restructuring Act of 1997. However, that section is inapplicable to the proposed Pilot Project. Section 339 authorizes the Department to "establish a pilot program to implement the provisions of section 134 of chapter 164 of the General Laws," which concerns the provision of Standard Offer Service not Default Service.

² Default Service must be procured through competitive bidding. *See* G.L. c. 164 § 1B(d).

³ The Department rejected a Massachusetts Electric Company proposal to set fixed Default Service prices for periods greater than six months. *Massachusetts Electric Company Default Service Pricing*, Department Letter Order dated April 3, 2001. If the Department were to consider this option for the Compact, it must similarly allow the customers of utility provided of Default Service the same options

⁴ Notwithstanding the Compact's provision of "Default Service," NSTAR still has an
(continued...)

This opt-out authority was granted by the Legislature as part of the Electric Restructuring Act and was specifically tied to the provision of Standard Offer Service not Default or Competitive Services. *See* G.L. c. 164 § 134. The Compact has provided no statutory basis for its proposal to enroll customers automatically without their consent. In addition, the Compact proposes to notify customers of the service switch during the Thanksgiving holiday season—giving them only a little more than three weeks to opt-out (notification to customers mailed November 14, 2001 with the deadline for opting out December 7, 2001).⁵ The Restructuring Act provides a 180 day opt-out period in its Municipal Aggregation provisions.⁶ *Id.* It is also not clear from the Compact's filing how customers would leave the Pilot Project to receive service from a competitive supplier or to return to NSTAR Default Service.

Given the open-ended nature of the Compact's proposal, the Attorney General urges the Department to open an investigation to determine the terms upon which service will be provided. A record should be created to answer the outstanding questions.

Sincerely,

Joseph W. Rogers
Assistant Attorney General

cc: Jeffrey Bernstein, Esq.
Robert Werlin, Esq.
Service List

⁴(...continued)

obligation to provide customer in this service area with Default Service if they so desire. NSTAR not the Compact is the supplier of last resort.

⁵ It must be noted that the law requires that all aggregators, outside the specifications for standard offer municipal aggregation, assure that customers have affirmatively chosen to participate or contract with the aggregator. Affirmative choice must be evidenced by a written signature, or by third party verification. Without this evidence certain sanctions may be imposed by the Department. In addition, affirmative choice provides for a rescission period. G.L. c. 164 §1F, 8.

⁶ The proposal indicates customers have 180 days to opt out. Termination of service beyond this 180 day period appears to be subject to as yet unspecified supply contract provisions. *See* Proposed Plan, p. 7.